applies to the descendants of every deceased child it should apply to the descendants of a child who is described with certainty, although not by name."

As may be gathered from the two opinions in the present case the courts of the United States are not at all in harmony as to what effect should be given to these statutes, and there is an uncertainty apparent in some of the cases as to the exact basis for their application. *Schumacher* v. *Pearson* (1902), 67 Ohio St. 330. In some of the courts the narrowest possible rule obtains and the statute is held not to apply where the legatee died prior to the making of the will (*Almy* v. *Jones,* supra), in others the time of death is disregarded, but the statute is not applied when the bequest is to a class. *Tolbert* v. *Burns,* supra; *Matter of Nicholson,* supra. In still other jurisdictions the statute is given the widest possible scope and is held to apply to a case like the one under consideration where the bequest is to a member of a class dead at the time the will is made. *Nutter* v. *Vickery,* 64 Me. 490; *Moses* v. *Allen,* 81 Me. 268, 17 Atl. 66; *Guitar* v. *Gordon,* 17 Mo. 408; *Jamison* v. *Hay,* 46 Mo. 546. In view of these conflicting decisions, and taking into consideration that the former rule of the common law worked a great hardship which the statute is designed to alleviate, it seems reasonable to hold with the dissenting opinion that the statute should be looked upon with favor by the courts and no limitations placed upon its operation by them where the legislature has placed none. Mere technicalities should not be permitted to defeat the very purpose of the statute. Those who are entitled to its benefits are equally so whether their dead parent was one of a class or was mentioned by name; whether he died before the will was made or afterward.

C. H. L'H.

UNSIGHTLY ADVERTISEMENTS AND BILLBOARDS.—Æsthetic principles may not be considered by the courts in determining questions concerning the validity of ordinances whose object is to regulate the use of billboards; in order to be upheld statutes and ordinances relating to such matters must be obviously intended to provide for the public safety and must be reasonably necessary to secure it. *City of Passaic* v. *Paterson Billposting, Advertising & Sign Painting Co.*—New Jersey Court of Errors and Appeals—62 Atl. Rep. 267.

Under a statute authorizing the governing body of any city to regulate the size, height, location, position and material of fences, signs, billboards, and advertisements, a city ordinance was passed providing that no sign or billboard shall be at any point more than eight feet above the surface of the ground and that it shall be constructed not less than ten feet from the street line. The plaintiff in error was convicted of the violation of this ordinance and the Supreme Court affirmed the conviction, holding that because the erection of such signs might be attended with danger to the public at times of severe storms or by the decay of their supports, the ordinance was not without legal authority. The Court of Errors and Appeals, however, holds that "such a possibility is not sufficient to justify the municipal authorities in

depriving a man of the ordinary use of his land," and that the effect of the ordinance is to take private property without compensation, and that the regulation is not reasonably necessary for the public safety and cannot be justified as an exercise of the police power. The court attributes the enactment of the ordinance "rather to æsthetic considerations than to considerations of the public safety. No case has been cited, nor are we aware of any case which holds that a man may be deprived of his property because his tastes are not those of his neighbors. Æsthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation," citing *Crawford* v. *Topeka,* 51 Kan. 756, 33 Pac. 476, 20 L. R. A. 692, 37 Am. St. R. 323; *Commonwealth* v. *Boston Advertising Co.,* 188 Mass. 348, 74 N. E. 601; *People* v. *Green,* 83 N. Y. Supp. 460; and distinguishing *Rochester* v. *West,* 164 N. Y. 510, 79 Am. St. R. 659, 53 L. R. A. 548.

It may be that some court will take another view of this matter. "It is generally assumed that the prohibition of unsightly advertisements (provided they are not indecent) is entirely beyond the police power, and an unconstitutional interference with the rights of property. Probably, however, this is not true. It is conceded that the police power is adequate to restrain offensive noises and odors. A similar protection to the eye, it is conceived, would not establish a new principle, but carry a recognized principle to further applications. In the matter of offensiveness, the line between a constitutional and an unconstitutional exercise of the police power must necessarily be determined by differences of degree. It is true that ugliness is not as offensive as noise or stench. But on the other hand offensive manufactures are useful, and the offense unintentional and inevitable, whereas in the case of an advertisement the owner claims the right to obtrude upon the public an offensive sight which they do not want, and which but for this undesired obtrusion would not be of the slightest value to him." (FREUND, POLICE POWER § 182.)